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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,692	06/06/2005	Thomas Becker	071308.0991	8443
31625 7590 12/23/2008 BAKER BOTTS L.L.P. PATENT DEPARTMENT 98 SAN JACINTO BLVD., SUITE 1500 AUSTIN, TX 78701-4039			EXAMINER TORRES, MARCOS L	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 12/23/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,692

Applicant(s)

BECKER ET AL.

Examiner

MARCOS L. TORRES

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-82 is/are pending in the application.
- 4a) Of the above claim(s) 56-68 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-55 and 69-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. In view of the applicant amendment the 112 Rejections for claims 42 and 69 have been withdrawn.
2. Applicant's arguments filed 10-10-08 have been fully considered but they are not persuasive.
3. Regarding applicant's arguments directed to the combination of the references as previously stated it would be obvious to one of the ordinary skills in the art to verify the data of the message was received correctly, and acknowledge if it was received correctly or ask for a retransmission if not.
4. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., using only a single channel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
5. Regarding applicant's arguments that Sivula and Boyle fail to teach establishing, directly or indirectly, a traffic channel connection to the telecommunication device for sending the information message and transmitting the information message by establishing an information session and keeping the traffic channel for analyzing the information message and for retrieving the multimedia, because they use multiple

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channels; contrary to the applicant's arguments paragraph 14 of Sivula does not disclose using two separate traffic channels [please note that the term connection and channel are not the same and they can have also multiple interpretations]. Also, the claim is an open ended claim [comprising] which is not limited by additional elements.

6. The rest of the arguments they fall for the same reasons as shown in paragraph 3-5 above. The rejection in record stands.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 42-55 and 69-82 rejected under 35 U.S.C. 103(a) as being unpatentable over Sivula 20010053687 in view of Boyle 6138158.

As to claim 42, Sivula discloses a method for delivering a multimedia message to a telecommunication device configured as a multimedia message sink, comprising: transmitting the multimedia message to a multimedia message service, configured as a multimedia message source for delivering the multimedia message to the telecommunication device center (see par. 0009); sending, via the multimedia message service center directly or indirectly, an information message to the telecommunication device, informing the telecommunication device about the stored multimedia message (see par. 0012); establishing, directly or indirectly a traffic channel connection to the telecommunication device for sending to the information message and transmitting the information message by establishing an information session; terminating the information session upon the transmission of the information message; and keeping the traffic channel connection established to the telecommunication device in the context of a fetching session has retrieved the content of the multimedia message intended for the telecommunication device from the multimedia message service center via the traffic channel connection (see par. 0013,0014). Sivula does not specifically disclose the telecommunication device has analyzed the received information message. In an

analogous reference, Boyle discloses the telecommunication device has analyzed the received information message (see col. 15, line 41 - col. 16, line 54). Therefore, it would have been oblivious to one of the ordinary skills in the art at the time of the invention to permit the device to acknowledge the reception of the message before closing the connection for the simple purpose of making sure that the message was received.

As to claims 43 and 70, Sivula discloses a method wherein the multimedia message service center indicates to the telecommunication device in the information session that the traffic channel connection remains established for a specified time which is sufficient for the analysis of the information message and for the duration of the fetching session (see par. 0013, 0014).

As to claims 44 and 71, Sivula discloses a method wherein the signaling with the transmission of the information message takes place with the aid of a special information element of an information element container used for the transmission of the information message or with the aid of a message which is separate from the transmission of the information message (see par. 0034).

As to claims 45 and 72, Sivula discloses a method wherein the telecommunication device indicates to the multimedia message service center in the information session that it wishes the traffic channel connection to remain established for a specified time which is sufficient for the analysis of the information message and for the duration of the fetching session (see par. 0034, 0035, 0039).

As to claims 46 and 73, Sivula discloses everything as explained above except for a method wherein the signaling takes place with the aid of an exchange of

messages between the telecommunication device and the multimedia message service center with a query message sent by the telecommunication device and an acknowledge message sent by the multimedia message service center . In an analogous art, Boyle discloses a method wherein the signaling takes place with the aid of an exchange of messages between the telecommunication device and the multimedia message service center with a query message sent by the telecommunication device and an acknowledge message sent by the multimedia message service center (see col. 15, line 41 - col. 16, line 54). Therefore, it would have been oblivious to one of the ordinary skills in the art at the time of the invention to permit the device to acknowledge the reception of the message before closing the connection for the simple purpose of making sure that the message was received.

As to claims 47 and 74, Sivula discloses a method wherein the established traffic channel connection is cleared down if the telecommunication device does not intend to start a fetching session at the time when the traffic channel connection is established (see par. 0049).

As to claims 48 and 75, Sivula discloses a method wherein the information message is inserted into a short message configured as a short message service message, the short message being sent by order of the multimedia message service center from a short message service center to the telecommunication device (see par. 0013, 0014, 0056).

As to claims 49 and 76, Sivula discloses a method wherein the information message is inserted into a wireless application protocol push message and the wireless

application protocol push message is inserted into a short message configured as a short message service message, the short message being sent by order of the multimedia message service center from a short message service center to the telecommunication device (see par. 0013, 0014).

As to claim 50, Sivula discloses a method according to claim 48, wherein he short message service center is instructed by the multimedia message service center when the information message is sent by the multimedia message service center to the short message service center (see par. 0013, 0014, 0056).

As to claim 53 and 79, Sivula discloses a method wherein the information session is carried out according to a modem protocol (see par. 0036, 0047).

As to claim 54 and 80, Sivula discloses a method wherein the fetching session is carried out according to a TCP/IP protocol (see par. 0055), a WSP protocol or a modem protocol (see par. 0047).

As to claims 55 and 82, Sivula discloses a method wherein audio, video and/or text data are transmitted with the multimedia message (see par. 0004, 0011).

As to claim 69, Sivula discloses a telecommunication device [b subscriber] for accessing multimedia messages stored in a storage location of a multimedia message service center, comprising: a central control device for controlling the operating and function sequences in the telecommunication device (see par. 0009); a fetching device for retrieving messages and/or information, said device being connected to the central control device; a transmitter/receiver for receiving an information message transmitted directly or indirectly by the multimedia message service center to the telecommunication

device, and which is connected to the central control device, and for forwarding the information message to the central control device in order to inform the telecommunication device about a multimedia message stored in the multimedia message service center for the said telecommunication device, wherein the transmitter/receiver for receiving the information message transmitted by the multimedia message service center by establishing an information session is connected directly or indirectly to the multimedia message service center over a traffic channel connection established by the multimedia message service center (see par. 0009-0011); and upon the transmission of the information message the information session is terminated; and analysis means assigned to the central control device, the analysis means being configured to analyze the information message received by the transmitter/receiver via the traffic channel connection and forwarded to the central control device is analyzed (see par. 0011-0014), wherein the fetching device and the central control device together with the assigned means of analysis form a function unit which is configured so that the traffic channel connection established to the telecommunication device remains established at least until the central control device has received information message, and the central control device has retrieved the content of the multimedia message intended for the telecommunication device from the multimedia message service center via the traffic channel connection in the context of a fetching session via the fetching device in accordance with the analyzed information message (see par. 0013,0014). Sivula does not specifically disclose the telecommunication device has analyzed the received information message. In an analogous reference, Boyle discloses the

telecommunication device has analyzed the received information message (see col. 15, line 41 - col. 16, line 54). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to permit the device to acknowledge the reception of the message before closing the connection for the simple purpose of making sure that the message was received.

As to claim 81, Sivula discloses a telecommunication device according to claim 69, wherein the telecommunication device is a mobile-radio device, in particular a cordless mobile handset (see par. 0047).

As to claims 51-52 and 77-78, Sivula and Boyle disclose everything as explained above except for the method wherein the information message is transmitted with the aid of in-band signaling such as FSK transmission or DTMF transmission. However, OFFICIAL NOTICE IS TAKEN THAT the use transmitting with the aid of in-band signaling such as FSK transmission or DTMF transmission is a common and well known technique. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to use these common and available transmission techniques for compatibility and bandwidth management.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCOS L. TORRES whose telephone number is (571)272-7926. The examiner can normally be reached on 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-252-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/George Eng/

Supervisory Patent Examiner, Art Unit 2617

/Marcos L Torres/

Examiner, Art Unit 2617